

Below is the body of a 4 page complaint that I filed with the EPA Hotline on 11-16-09 supported by 30+ pages of historical documentation. I have alleged actions by certain people involved in the cleanup of Libby that are designed to deceive and defraud the people of Libby out of their rightful restoration compensation relating to Operable Unit 01, the City-owned Export Plant.

I hope this will snowball into a grassroots effort by the people of Libby to protect their rights under Superfund designation and actually receive restoration as required under Superfund.

I have further explained that the fraudulent actions of EPA in Libby have bled over into an effort to deceive the people of Libby relevant to the EPAs' position that they have eliminated pathways of exposure in Libby. This has resulted in Region 8 Director Bill Murray attempting to establish that eliminated pathways of exposure in Libby can include visible vermiculite. If EPA establishes closure of pathways, even when visible vermiculite is present, they will leave town and the people of Libby will pay for Operations and Maintenance out of their personal pockets, forever.

I don't believe any sitting or prospective Council member will fight this effort to secure our future. It would be politically unpalatable to take a stance against accepting \$2 million. Once you read the complaint, and see that I have included Mayor Roll in it, you will understand why he does not support this complaint.

Thanks for your support.

Sincerely, DC Orr


1135483 - R8 SDMS

My contact information is; DC Orr

PO Box 1268

Libby, MT 59923

Phone 406-293-4702

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11-14-09

On July 10th, 2000, EPA rep Jude Hobza told the Libby City Council they had to make a decision concerning placement of buildings associated with the cleanup of city-owned OU-1, the Export Plant. EPA limited the decision to either private property owned by their mayor or property owned by their constituents as dictated in item 2.1.6 of the Work Plan they had just received. "The buildings will be erected at a site selected by the City of Libby". "The EPA is saying the stalling is over" Mr. Hobza said, it will go one of two ways but a decision will be made. Thus began an epic journey through the smoke-filled backrooms of dirty politics, a glimpse into the underbelly of civil society gone horribly wrong. Council acquiesced to the bully tactics of a federal agent and the people of Libby are paying for that mistake to this very day.

Council voted to accept the buildings on City property. The buildings were immediately built on property owned by Mayor Berget. Mayor Berget ultimately received over \$ 1million in improvements to his private property paid for by Grace initially and by EPA after they took the lead on this Project. Electric, water and sewer upgrades, paving, concrete, renovation of an existing building, landscaping. Huge improvements were made to his private property while the City Council was turning down an offer of \$2 million from Grace to buy OU-1.

I filed a complaint on this obvious corruption with the OIG in the fall of 2002. Paul Peronard took credit for it on the front page of the Nov. 6, 2002 Western News. He claimed the results would be made public. They are still secret.

I amended that complaint after the "boatramp debacle" in June of 2003. The last line of the amendment is prophetic when I state that "EPA is attempting to let Grace off the hook for not meeting the conditions of the UAO". I called it a "taxpayer bailout of Grace".

This complaint is specific to the terms of the UAO, and supporting documents concerning "restoration". The record is clear on setting the terms of restoration. Item #2.16 of the SOW states that the respondent, initially Grace, shall get an appraisal of the 23,820 square feet of buildings, industrial power grid and distribution system, sewer system, truck scales, railroad sidings and spurs, and private 6 inch water system with hydrant and other appurtenances of the property. The SOW further states that the respondent shall either "restore the property to the value established by this appraisal and agreed to by the property owner or pay cash compensation as agreed to by the property owner". Paul Peronard sent a letter dated December 7, 2000 to Mr. Jim Stout detailing what EPA expected a restoration plan to include. He stated that the unresolved restoration issues "will lead to further conflict and expense". "To be clear, the UAO requires the restoration of all buildings at the Export Plant", Mr. Peronard continued.

Our City Attorney Scott Spencer sent letters to Paul Peronard and Matt Cohn of EPA for a period of one year, from May, 2001 to June of 2002 begging for information on the resolution of this case. He never got a reply. That has been the official stance of EPA ever since. Nonresponse and lies are all we receive in our requests for information.

The site is fast headed for a Record of Decision and I now sit on the City Council and must make some important decisions regarding this property. I cannot make informed decisions if the EPA refuses to give us the requested information that will drive the decision. My repeated attempts to gain access to the information have been stymied.

This illustrates why there are laws to prevent graft and corruption. I can make a good case that the initial participants, Tony Berget, Paul Peronard and WR Grace all acted in self interest to initiate this mess. Tony Berget acted out of simple greed, an appetite for money and power are the oldest motivations for criminal activity. WR Grace's unethical corporate strategies are public knowledge, they have had such success buying political influence that lining the pockets of a small town mayor would be business as usual. Paul Peronard was driven by an ego as big as all outdoors. He believed he could create order out of the chaos he fomented when he encouraged this deal that compromised the integrity of the other two parties.

The corruption these three began has now infected the agencies involved. EPA and the City of Libby have more complicated involvement than Grace. I see some good people in both agencies who would like to get past this corruption of the process but they are bound by the lies of the past. Their loyalty toward their friends and colleagues who started this binds their actions to clean the mess up. I have found Doug Roll, Victor Ketellapper, Rebecca Thomas, and Bill Murray to be sincere in their efforts, they are simply unaware of the facts and loyal to their friends. I hold no ill will against them personally, but their actions in regards to this issue are criminal. All of the preceding, as Ted Linnert so eloquently put it, is "ancient history".

I will now show how our history affects our future.

Ms. Rebecca Thomas sent a letter to the City dated September 3, 2009 which set the tone for EPA using lies to bully the City about restoration. Ms. Thomas starts out saying the "buildings were in poor condition when they were given to the City". She knows that they had just stood up through the winter of '96 when Lincoln County saw 50 structures fall under heavy snow load. The buildings were sound. The buildings were harmed by Grace, with EPA oversight, when they tried to clean them. This is supported by DEQ update on 5-22-01 where DEQ states that there is a dispute on restoration of OU-1 stating the contention that Grace made those buildings "structurally unsound" in the process of cleaning them. In a letter Paul Peronard sent to Grace Project Manager Jim Stout on Dec. 7, 2000 Paul states that "To be clear, the UAO requires the restoration of all buildings at the Export Plant,....Prior to the start of the clean-up there were five legally inhabitable buildings in use at the property, and unless the City of Libby agrees to some alternative plan, it is the EPA's expectation that there will be five legally inhabitable buildings upon completion of the ordered Removal Action. Ms. Thomas makes her statement in an effort to deceive and defraud the people of Libby out of their rightful restoration compensation.

Ms. Thomas continues to lay out a storyline with the statement, "There was inadequate water supply to the building..." The SOW in sec. 1.2.9 states that "Water is available to

Operable Unit 01 through hose bibs and a fire hydrant". I know from personal experience that Grace had a 6 inch waterline to that hydrant as I had excavated that area in a petroleum release remediation for Grace in 1994. There was ample supply of water to the site. There are only a dozen homes on that side of the river and they are already supplied by two 4 inch mains, one to Thomas street and one to Colorado. The six inch main was a private line Grace installed in the 40's just for their facility. There is not enough room on that side of the railroad tracks to develop anything that would require a ten inch line, the ten inch line was a ploy designed to defraud the people of Libby out of their rightful restoration compensation.

There is a letter from City Attorney Spencer to the council dated April 19, 2003. Mr. Spencer wrote this narrative on his own to explicate his views and opinions to the Council, it is not a City position statement. He begins the letter with the statement, "I may not be completely and technically correct in what I say". Boy, was he right on point there. The entire narrative is fiction. He states that the City never had an offer from Grace yet the offer is documented in the minutes. He was mislead. He tells the same story about inadequate water supply. It was a lie. He states that the 500 foot waterline cost Grace "probably" \$150,000. That is an insane statement. Right now Libby has a contractor installing sewer line, which is more technically involved than water line, for around \$25/ft. The value Mr. Spencer placed on that waterline is elevated 10 times higher than reality. He states that a discussion occurred between several parties and "The decision was made that an acceptable solution would be if a waterline was placed on the property, the buildings removed, and the soil generally restored". A decision between the attorney and one or two Councilman would be an illegal decision. There was no decision. Council has never voted on restoration of this property. He ends this letter by saying, "When this matter comes from a vote of the council and for approval, this will be discussed further". Mr. Spencer damaged the City's position with this letter, but no decisions were made relating to restoration, ever.

Mayor Roll and Mr. Lensink maintain that the City of Libby accepted a \$15,000 waterline in return for \$2million worth of infrastructure. Their statements are lies designed to deceive and defraud the people of Libby out of their rightful restoration compensation. Mayor Roll has said this repeatedly in public and the news. Mr. Lensink sent a letter dated Sept. 22, 2009 to the Mayor stating that the City received this waterline "in exchange for the value of the buildings". If EPA had held Grace to the terms of the UAO, Mr. Lensink and Mayor Roll would have the appraisal required by the UAO that would prove or disprove these statements. Without documentation, these men are trying to create an illusion of a "deal" that never happened. The City Council has taken no action regarding restoration ever. There is no signed agreement. There is only the stories of these two men repeating what they heard from someone they trusted, someone who lied to them. That won't stand up in court. The UAO was a legal document designed to avoid these conflicts and EPA will not release the documents when we ask for them. This is an effort to deceive and defraud the people of Libby out of their rightful restoration compensation.

Mayor Roll forwarded the 9-22 letter to the Council but failed to pass on the "searchable index of documents" Mr. Lensink enclosed. Mayor Roll is not giving the Council the information we need to protect our constituents. His actions are designed to defraud the people of Libby out of the rightful restoration of their public property.

The most egregious results of this sustained fraud are that it also results in continued exposures for the people of Libby to a substance that has an unknown toxicity. This cannot be more readily demonstrated than in the letter I received from Director Bill Murray dated Sept 22, 2009 concerning a release of contamination at OU-1 earlier this summer. The boatramp at OU-1, used by the recreation industry, was washed out by contractors using the City wet well to load their trucks for use on the Project. It was estimated by EPA that 40 cubic yards of material washed into the Kootenai River in this incident, netting delineating limits of prior cleanup was exposed, visible vermiculite was brought to the surface. EPA contractors simply filled the chasms created, they removed none of the contamination brought to the surface. People using this boatramp walked through visible contamination for the rest of the summer.

Director Murray knows that we are headed for a Record of Decision at OU-1 which will bar legal challenges from the people of Libby, forever. He knows that there are huge problems there and has orders to clear this from the docket, restoration be damned. He knows that the Libby Asbestos site is the site with the most documented death and disease in the history of EPA. He knows that the EPA is going to force this ROD on the people of Libby predicated on the story that EPA has eliminated pathways of exposure in the sensitized community. He knows that is not true. He knows that EPA has failed to characterize the material they are working with in Libby and thus cannot say that, according to the OIG, anything they have done so far protects human health. He knows that the EPA is going to tell the people of Libby that they have "closed pathways of exposure" and thus toxicity is not an issue. He knows that EPA has to set a precedent for exactly what their position is relative to "elimination of pathways of exposure". They don't have the analytical techniques to prove elimination of pathways of exposure, they have only the credibility of the United States Environmental Protection Agency staking a position on the issue.

I know that the EPA has no credibility in Libby. I know that the EPA cannot prove elimination of pathways of exposure. I know that when Director Bill Murray states that "The exposure pathway to Libby Amphibole that may have been caused by the erosion was eliminated", and he knows there is visible vermiculite present, he is being deceptive. Director Murray's statement is designed to deceive and defraud the people of Libby out of their rightful restoration compensation. It has the further effect of harming human health.

The action that lined a few pockets of the politically influential in Libby has affected the cleanup in a manner that harms human health and the corruption goes all the way to the top in Region 8. It has been allowed to fester for 9 ½ years until it permeates the entire Project. EPA is attempting to leave Libby without closing pathways of exposure and local, well paid, politicians are willing to let that happen. I won't be counted among them. DC Orr